

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

Karen White,

Plaintiff,

V.

BMW of North America, LLC,

Defendant.

[illegible]

CIVIL ACTION NO. 3:12-CV-00115

**DEFENDANT’S MEMORANDUM IN OPPOSITION TO PLAINTIFF’S MOTION FOR  
ENLARGEMENT OF TIME IN WHICH TO DESIGNATE EXHIBITS**

COMES NOW, Defendant BMW of North America, LLC, by counsel, in opposition to Plaintiff's Motion for Enlargement of Time in Which to Designate Exhibits, and states as follows:

This case arises from the acquisition and use of a 2009 BMW automobile which is over three years old and, at last report, had accumulated more than 143,000 miles. Procedurally, the plaintiff first filed this matter in 2010 in State Court, only to take a non-suit. Thereafter, the plaintiff filed a Class Action and eventually amended the Complaint to this individual action. The case alleges a violation of the Virginia Lemon Law. The Period of Protection under the Lemon Law has expired. Now, on the eve of trial, plaintiff seeks to add a witness and additional claims of engine failure regarding the vehicle.

Defendant objects to this as a last minute effort to add to plaintiff's case. It is interesting to note by plaintiff's own exhibits, she had tendered the vehicle for repairs on May 2, 2011, at which time the vehicle had accumulated 67,739 miles, and the vehicle was not brought back to a dealership again for 15 months, until August 3, 2012, at which time the vehicle had accumulated 143,782 miles. Clearly, the plaintiff accumulated more than 75,000 miles on the vehicle in less than 15 months without any record of service or repairs. Now she is back to the dealership complaining that the engine will need additional substantial service and repair.

The plaintiff's effort to seek an enlargement is self-serving and should not be permitted. Should the Court decide to do so, it is respectfully requested that the defendant be given the opportunity to have its expert inspect and examine the vehicle and prepare an amendment to his report. This will probably necessitate the need for a short adjournment of the trial date, which is presently scheduled for October 1, 2012.

For the foregoing reasons, it is respectfully requested that the Court deny plaintiff's motion.

Respectfully submitted,

Date: September 14, 2012

/s/ Rachel Elsby  
Rachel Jane Elsby (VSB #81389)  
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*Counsel for Defendant BMW of North America, LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of September 2012, I electronically filed the foregoing DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME IN WHICH TO DESIGNATE EXHIBITS with the Clerk of Court using the CM/ECF system which will send notification of such filing via Notification of Electronic Filing (NEF) to the following:

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